

SERVICE DATE – LATE RELEASE JANUARY 16, 2004

SURFACE TRANSPORTATION BOARD

DECISION

No. 41185

ARIZONA PUBLIC SERVICE COMPANY & PACIFICORP

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: January 16, 2004

By decision served on May 12, 2003, the Board reopened this proceeding to redetermine the maximum reasonable rate for the movement of coal by The Burlington Northern and Santa Fe Railway Company (BNSF)<sup>1</sup> from the McKinley mine to the Cholla electric generating plant, owned by Arizona Public Service Company and PacifiCorp (Arizona) and located near Joseph City, AZ. Reopening was based on materially changed circumstances – specifically, the fact that the McKinley mine will exhaust its coal reserves sooner than anticipated in prior Board decisions.

By motion filed on January 15, 2004, BNSF requests an order compelling Arizona to produce the documents requested in BNSF Request Nos. 2,<sup>2</sup> 3(b),<sup>3</sup> and 3(d),<sup>4</sup> which are attached to BNSF's motion. Each of these requests could lead to the production of confidential transportation rate information. BNSF represents that, in the course of collecting this information, Arizona stated that it

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<sup>1</sup> The original defendant in this proceeding, The Atchison, Topeka and Santa Fe Railway Company, has since merged with the Burlington Northern Railroad Company to form BNSF. The defendant is referred to as BNSF.

<sup>2</sup> Request No. 2 asks for forecasts or projections prepared by or for, or in complainants' possession, of future traffic volumes, revenues, and/or rates for coal moving over any portion of BNSF's system for delivery to or burn at Coronado and/or Cholla.

<sup>3</sup> Request No. 3(b) asks for all documents relating to the potential closure of the McKinley mine, including documents containing estimates of the coal to be produced at the McKinley mine that will move to Cholla for each year 2004-2113 and/or the transportation rates for such coal.

<sup>4</sup> Request No. 3(d) asks for all documents relating to the potential closure of the McKinley mine, including documents containing estimates of the coal to be produced at each mine origin other than the McKinley mine that will move to Cholla for each year 2004-2113 and/or the transportation rates for such coal.

cannot produce it without an order from the Board but that it does not oppose BNSF's motion to compel their production.

BNSF's motion will be granted. Arizona does not appear to object. It is well established that the information sought is discoverable in this type of proceeding. The Board has granted Arizona access to similar documents in this proceeding. The protective order applying to this case will govern the treatment of any confidential documents received.

It is ordered:

1. BNSF's motion to compel is granted.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary